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NO. 86-1710

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1986

WILLIAM WARD KNAPP, Petitioner,

v.

THE STATE OF ARIZONA, Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ARIZONA

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

I. WAS THIS PETITION FOR CERTIORARI FILED IN ACCORDANCE WITH THE TIME LIMITS SET BY SUPREME COURT RULE 20?

II. DID THE AFFIDAVIT FOR THE SEARCH WARRANT PROVIDE THE ISSUING MAGISTRATE WITH A "SUBSTANTIAL BASIS" FOR CONCLUDING THAT PROBABLE CAUSE FOR A SEARCH EXISTED, AS REQUIRED BY ILLINOIS V. GATES, AFTER INFORMATION OBTAINED IN A PRIOR WARRANTLESS ENTRY OF THE SUSPECT'S ROOM HAS BEEN EXCLUDED FROM CONSIDERATION?

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STATEMENT OF THE CASE

Petitioner was indicted on a single count of transportation of marijuana. Law enforcement authorities became aware of him on June 29, 1985, because they were called by the management of a Tucson Holiday Inn. (R.T. of January 21, 1986, at 4.) When Officers Knoblock and Ralls arrived at the motel, they were told that marijuana had been found by a maid in one of the rooms. (Id. at 5.) After confirming this information with the maid in question, the officers were admitted to the room by motel personnel using a pass key, looked around without touching anything, and left. (Id. at 5-6.) They observed what appeared to be bags of marijuana in the bathroom. (Id. at 26.) They therefore obtained information about the person who had rented the room, including a vehicle description, and set up surveillance in a room above the room containing the marijuana, with the help of another officer named Kreutz. (Id. at 6-7.)

Sometime later that day the officers observed a car matching the description which they had obtained park in front of the motel, and they saw petitioner get out of the car. (Id. at 7-8.) He emptied the contents of a suitcase onto the back seat of the car, took the empty bag inside the room, and came back out with the suitcase now appearing full and heavy. (Id. at 35-36.) After looking around in all directions, petitioner then re-entered his car and started to drive away, but was stopped before he could get out of the parking lot. (Id. at 35-36.) A telephonic search warrant was obtained for the motel rooms, the luggage, and the car. (A transcription of that conversation with the magistrate is appended to the Petition.) The police recovered marijuana packaged just the way the officers had seen it in the bathroom of petitioner's room. (R.T. of Jan. 21, 1986, at 10.)

After receiving all this testimony at a suppression hearing, the trial judge

concluded that the officers' original entry had been improper, but denied the suppression motion anyway:

> The Court has considered the motions to suppress and finds that the entry into the motel room initially by the police officers was illegal and, therefore, grants the motion to suppress with respect to what the police officers saw in the room at that time.
>
> However, the Court is of the opinion that there are sufficient facts contained in the search warrant and the affidavit in support of the search warrant independent of what the officers saw in the room to constitute probable cause for the issuance of the search warrant, and, therefore, denies the motion to suppress insofar as it relates to that which was seized and pursuant to the search warrant.

(Id. at 118.)

The validity of this ruling was the sole issue raised on appeal after petitioner was found guilty as charged in a jury trial. As reflected in the documents submitted with the petition, the trial court's ruling was

upheld by the Arizona Court of Appeals, in a Memorandum Decision which the Arizona Supreme Court declined to review. Petitioner then filed his petition with this Court; the timeliness of the petition is questioned in Argument I. of the "Reasons for Denying the Petition", infra.

REASONS FOR DENYING THE PETITION

I. THE PETITION FOR CERTIORARI IS UNTIMELY, AND SHOULD THEREFORE BE REJECTED.

This Court normally will not entertain a petition for certiorari which has not been filed in a timely manner. The time for filing is governed by this Court's Rule 20, which states in pertinent part (emphasis added):

> .1. A petition for writ of certiorari to review the judgment in a criminal case of a state court of last resort or of a federal court of appeals shall be deemed in time when it is filed with the Clerk within 60 days after the entry of such judgment.
>
> * * *
>
> .4. The time for filing a

> petition for writ of certiorari runs from the date the judgment or decree sought to be reviewed is rendered, and not from the date of the issuance of the mandate (or its equivalent under local practice).

"Exhibit A" to the petition is a copy of the mandate in this case, which issued from the Arizona Court of Appeals after the Arizona Supreme Court declined to review the decision of the Court of Appeals. This Court's certiorari jurisdiction exists to permit review of decisions by state courts "of last resort". (Supreme Court Rules 17.1, 20.1.) Therefore, the date governing the filing time for this petition was the date of the Arizona Supreme Court's order declining review, not the date of the Court of Appeals' mandate. "Exhibit A" reflects that the date of the Arizona Supreme Court's order was January 20, 1987. The allotted 60 days for filing the petition therefore expired on March 21, 1987, but the certificate of service shows that the petition was not mailed until April 6,

1987. Hence, the petition was filed more than 2 weeks late, and should be denied for that reason alone.

II. ALL THAT A REVIEWING COURT NEED FIND IN REVIEWING THE ISSUANCE OF A SEARCH WARRANT IS THAT THE ISSUING MAGISTRATE POSSESSED A "SUBSTANTIAL BASIS" FOR CONCLUDING THAT PROBABLE CAUSE EXISTED: SUCH A SUBSTANTIAL BASIS EXISTED IN THE OBSERVATION OF MARIJUANA MADE BY A CITIZEN-INFORMER, TRANSMITTED TO THE MAGISTRATE THROUGH OTHER RELIABLE PERSONS AND SUPPLEMENTED BY OBSERVATIONS OF PETITIONER'S PECULIAR CONDUCT MADE BY THE POLICE, SO THE WARRANT HERE WAS CORRECTLY ISSUED IN LIGHT OF THE TOTALITY OF THE CIRCUMSTANCES.

The marijuana which formed the basis for the charges against petitioner was seized pursuant to a search warrant. Petitioner nonetheless claims that the seizure was illegal, arguing that the affidavit supporting the warrant failed to establish probable cause after the parts which could not properly be considered (the observations of the marijuana made by two police officers during their original warrantless entry into petitioner's room) had been eliminated.

Both the trial court and the Arizona Court of Appeals concluded that the affidavit was sufficient, even after deletion of the improper material, and the Arizona Supreme Court signalled its agreement by refusing to review the case and this Court should do the same.

The proper approach for evaluating the sufficiency of affidavits for search warrants was discussed by this Court in Illinois v. Gates, 462 U.S. 213 (1983).

> As early as Locke v. United States, 7 Cranch. 339, 348 (1813), Chief Justice Marshall observed, in a closely related context, that "the term 'probable cause', according to its usual acceptation, means less than evidence which would justify condemnation .... It imports a seizure made under circumstances which warrant suspicion." More recently, we said that "the quanta ... of proof" appropriate in ordinary judicial proceedings are inapplicable to the decision to issue a warrant. Brinegar, supra, 338 U.S., at 173. Finely-tuned standards such as proof beyond a reasonable doubt or by a

preponderance of the evidence, useful in formal trials, have no place in the magistrate's decision. While an effort to fix some general, numerically precise degree of certainty corresponding to "probable cause" may not be helpful, it is clear that "only the probability, and not a prima facie showing, of criminal activity is the standard of probable cause."

* * *

We also have recognized that affidavits "are normally drafted by nonlawyers in the midst and haste of a criminal investigation. Technical requirements of elaborate specificity once exacted under common law pleading have no proper place in this area." Ventresca, supra, 380 U.S., at 108.

* * *

Similarly, we have repeatedly said that after-the-fact scrutiny by courts of the sufficiency of an affidavit should not take the form of de novo review. A magistrate's "determination of probable cause should be paid great deference by reviewing courts." Spinelli, supra, 383 U.S., at 419. "A grudging or negative attitude by reviewing courts toward warrants,"

Ventresca, supra, 380 U.S., at 108, is inconsistent with the Fourth Amendment's strong preference for searches conducted pursuant to a warrant "courts should not invalidate ... warrant[s] by interpreting affidavit[s] in a hypertechnical, rather than a commonsense, manner." Id. at 109.

* * *

Reflecting this preference for the warrant process, the traditional standard for review of an issuing magistrate's probable cause determination has been that so long as the magistrate had a "substantial basis for ... conclud[ing]" that a search would uncover evidence of wrongdoing, the Fourth Amendment requires no more. Jones v. United States, 362 U.S. 257, 271 (1960). See United States v. Harris, 403 U.S. 573, 577-583 (1971).[10]

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10 We also have said that "although in a particular case it may not be easy to determine when an affidavit demonstrates the existence of probable cause, the resolution of doubtful or marginal cases in this area should be largely determined by the preference to be accorded

to warrants," Ventresca, supra, 380 U.S., at 109.

* * *

> For all these reasons, we conclude that it is wiser to abandon the "two-pronged test" established by our decisions in Aguilar and Spinelli. In its place we reaffirm the totality of the circumstances analysis that traditionally has informed probable cause determinations. See Jones v. United States, supra; United states v. Ventresca, supra; Brinegar v. United States, supra. The task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the "veracity" and "basis of knowledge" of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place. And the duty of a reviewing court is simply to ensure that the magistrate had a "substantial basis for ... conclud[ing]" that probable cause existed.

(462 U.S. at 235-39.)

Viewed in the light of these principles, it is clear that the facts supplied by

Officer Kreutz in his telephonic affidavit (a copy of which is included in the petition) were entirely sufficient to uphold issuance of the search warrant. Eliminating the two sentences of the affidavit which contain the observations made by Officers Ralls and Knoblack during their illegal entry into petitioner's room, the affidavit discloses the following:

1. A maid employed by Holiday Inn observed in Room 129 what appeared to her to be marijuana in "quantity".

2. The management of the Holiday Inn reported this observation to the police and showed the contents of the room to them.

3. The person renting the room used the name Robert Pechulis.

4. The person renting the room had indicated in registering that he was driving a car with Arizona license plate CNT 534.

5. A police surveillance team observed a person who matched the description of "Pechulis" drive up in a car with that license number.

6. "Pechulis" dumped the contents of his luggage into his car and brought the emptied bags, as well as folded boxes, into the room; when he left the room a short time later the bags appeared full and had become so heavy that he was having difficulty carrying them.

7. "Pechulis" attempted to drive away and was stopped.

Most of these facts are superficially innocent matters, which take on the sinister cast of criminality only because of the observation of the suspected marijuana by the maid. The petition therefore focuses its attack on that particular observation, and makes two, somewhat interrelated arguments. First, petitioner complains that the affiant (Kreutz) did not speak to the maid, so the matter he put into the affidavit about her observation was multi-level hearsay. Second, he points out that the maid was not named in the affidavit, and suggests that, as an "anonymous informant" her reliability is

suspect. From all this he concludes that there was too little of probative value in the affidavit to support the warrant.

These arguments can best be analyzed in reverse order. While the maid was not specifically named in the affidavit, that does not make her a suspect "anonymous informant" in the sense that that phrase is generally used.

> Everyone who gives information to the police might be called an "informant" in the broad sense of that word. "But the person most of us have in mind when we discuss this subject is in a somewhat more restricted category. He is likely to be a person in the underworld or a person on its periphery; in its confidence, or so much 'a part of the scenery' to the criminal that this person is in a particularly good position to know the story of a crime committed, the story of criminal business done, being transacted or proposed for the future; or at least he gets significant bits of information which, when placed in context by the investigator, will demonstrate an accurate picture of crime." It is

this type of person to which the word "informant" is intended to apply herein.

This narrower interpretation of the word is necessary in this context, for the courts have quite properly drawn a distinction between such a person and the average citizen who by happenstance finds himself in the position of a victim of or a witness to criminal conduct and thereafter relates to the police what he knows as a matter of civic duty. One who qualifies as the latter type of individual, sometimes referred to as a "citizen-informer," is more deserving of a presumption of reliability than the informant from the criminal milieu. As Justice Harlan pointed out in United States v. Harris,

> the ordinary citizen who has never before reported a crime to the police may, in fact, be more reliable than one who supplies information on a regular basis. "The latter is likely to be someone who is himself involved in criminal activity or is, at least, someone who enjoys the confidence of criminals."

1 W. LA FAVE, SEARCH AND SEIZURE § 3.3, at

611 (2d ed. 1987) (footnotes omitted). Indeed, this Court and numerous other courts have proceeded on the basis that the veracity of a citizen-informer can be assumed. (Id. at § 3.4(a); see, e.g., Chambers v. Maroney, 399 U.S. 42 (1970).)

The maid here was entitled to be treated by the magistrate as such a presumptively reliable citizen-informer because, while her name was not specified in the affidavit,[1] she was clearly identified by position -- the maid caring for Room 127 of the Holiday Inn on West Grant Road in Tucson. This was enough to set her apart from the criminal milieu. "[I]t is one thing for the person giving the information to be anonymous even to the police and quite another for him to be 'known to the police but merely unidentified'." 1 LA FAVE § 3.4(a) at 725. Even under the stricter test applied before Illinois v. Gates was decided information from known but unnamed citizen-informers was

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1 The lady was identified during the suppression hearing as Mariana Benitez.

held reliable enough to provide probable cause. See, e.g., United States v. Fooladi, 703 F.2d 180 (5th Cir. 1983), aff'd on rehearing, 746 F.2d 1027 (5th Cir. 1984), cert. denied, ___ U.S. ___, 105 S.Ct. 1362 (1985) ("Although the name of the glass company's representative was not disclosed in the affidavit, the name of the company ... was disclosed. At least when the information is furnished on behalf of a company by one of its employees ... disclosure of the company name is sufficient."); United States v. Rowell, 612 F.2d 1176 (7th Cir. 1980) (information from unnamed American Express employee, to bank official, to police, that money orders were forgeries); United States v. King, 601 F.Supp. 783 (N.D. Ill. 1985) (information from unnamed Ohio bank employee, to Illinois bank employee, to police; post-dates Gates, but does not mention its looser standard); People v. Henry, 631 P.2d 1122 (Colo. 1981) (information from unnamed apparent victim of assault to one police officer to other

officers provided probable cause for arrest).

The maid therefore was a presumptively reliable source of information. The Holiday Inn manager was likewise presumptively reliable, and the same is true of the other police officers who conveyed the information to the affiant, Kreutz. United States v. Ventresca, 380 U.S. 102, 111 (1965); 2 LA FAVE § 3.5(a), and numerous cases cited therein. Thus, there was a presumptively reliable chain of communication all the way from the maid who saw the apparent marijuana through the affiant officer to the magistrate. Moreover, that the magistrate could conclude that the substance probably was marijuana, even without any information detailing the maid's qualifications to identify the weed, is clear. A number of cases have found no fault with informants' identifications of probable contraband without enumeration of qualifications to make such identifications. See, e.g., McCray v. Illinois, 386 U.S. 300 (1967); Christian v. McKaskle, 731 F.2d 1196 (5th

Cir. 1984); United States v. House, 604 F.2d 1135 (8th Cir. 1979), cert. denied, 445 U.S. 931 (1980); United States v. Cates, 663 F.2d 947 (9th Cir. 1981); United States v. Shipstead, 433 F.2d 368 (9th Cir. 1970); State v. Diffenderfer, 120 Ariz. 404, 586 P.2d 653 (Ct.App. 1978); Dishman v. State, 3 Tenn.Cr.App. 725, 460 S.W.2d 855 (1970). It should also be recalled that the magistrate had not only the maid's statement but also the police observations of petitioner's peculiar conduct to go on; such circumstances tend to verify a citizen-informer's conclusions about the nature of contraband. See People v. Rueda, 649 P.2d 1106 (Colo. 1982).

The establishment of the maid's presumptive reliability (which nothing either within the affidavit or outside of it rebutted in the least) really answers both of petitioner's arguments. The maid and everyone else in the chain of communication to the magistrate was apparently reliable. The most natural and reasonable

interpretation of the affidavit is that the maid's observations were passed all the way along to Kreutz and thence to the magistrate. Certainly it was multi-level hearsay, but hearsay the reliability of which is challenged only by speculation, not by actual facts or reasonable inferences derived from facts. The hypertechnical parsing of the affidavit advocated by petitioner is an approach condemned repeatedly by this Court, from Brinegar v. United States, 338 U.S. 160 (1949), through Ventresca to Gates. This Court reiterated the point of Gates in Massachusetts v. Upton, 466 U.S. 727, 728 (1984), that "the task of a reviewing court is not to conduct a de novo determination of probable cause, but only to determine whether there is substantial evidence in the record supporting the magistrate's decision to issue the warrant". The Pima County Superior Court found probable cause; the Arizona Court of Appeals found probable cause; the Arizona Supreme Court did not

disagree with either of them. Applying the deferential standard this Court has itself established, it is certain that probable cause existed, so this petition should be denied.

CONCLUSION

The Court should not even consider this petition, because it was filed untimely. However, even on its "merits" the petition warrants no relief, because the actions of the Arizona courts were manifestly correct. Therefore, regardless of how this petition is approached, it deserves only to be denied.

RESPECTFULLY SUBMITTED,

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EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

OF SUPPRESSION HEARING

JANUARY 21, 1986

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JOSEPH KNOBLOCK,

called as a witness on behalf of the State, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. NYGAARD:

Q Officer, could you state your name, please:

A Joseph Knoblock.

Q And what is your occupation at this time?

[PAGE 4]

A I am a police officer for the City of Tucson.

Q How long have you been with Tucson Police Department?

A Since March of '85.

Q And were you on duty as a police officer back on June 29, 1985?

A Yes, Ma'am.

Q And were you working with someone else at that time?

A Yes, Ma'am. I was working with another officer.

Q Now, do you recall being summoned to -- I believe it was the Holiday Inn on that day?

A Yes, Ma'am.

Q Can you tell us how that came about?

A We were dispatched to the Holiday Inn there by Grant and I-10. The police department received a call from the motel, requesting us to come there.

Q And do you know who it was that made the call?

A It was from -- I can't remember her name now. It's on my report. She is like the assistant manager or management type of a person with the motel.

Q Could her name have been Linda Dutton?

A Yes, Ma'am.

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Q And when you responded to the motel,

did Officer Ralls go with you?

A Yes, Ma'am.

Q When you got there, did you have any contact with Linda Dutton?

A Yes, Ma'am.

Q And did she tell you why she had requested you to come there?

A Yes, she did, Ma'am.

Q What was the reason she requested you to come?

A She stated that a maid had found some marijuana in one of the motel rooms.

Q And did she describe any further with any details about what the maid had found?

A I don't remember exactly what was all said at this time.

Q Okay. As a result of that information, what did you do?

A We contacted the maid and a maintenance man also that were there and we obtained a -- obtained the keys and went into one of the rooms.

Q Now, was the maid's name Mariana Benitez?

A Yes, Ma'am.

Q Were the hotel personnel -- had they already [PAGE 6] previously been in the room?

A Yes, Ma'am. They stated that they had gone to the room to clean it, and I asked what their reason was for going into the room.

Q Now, when you went into the room, did you touch anything?

A No. We just went into the room and looked inside and then exited again.

Q And what did you do as a result of that or after that?

A After we went inside the room?

Q Yeah, and came out.

A Okay. After we came back out, we secured the room and then we obtained a key to a room which was directly above the one we went into on the second floor where we could watch the room.

We also obtained other information as far as who was renting, the register on the room, and any vehicles associated with the room.

Q Did you get information about a specific vehicle that went with the person that rented the room?

A Yes. We got a license number and a description of a vehicle -- of a person that had rented the room.

Q Do you recall what the name of the person who [PAGE 7] rented the room was, what name was given?

A No, I don't remember right now.

Q Do you recall whether that was information that you put into your report?

A I am not positive. I would have to look at my report to see.

Q Okay. Was the name -- do you remember whether the name that was on the registration slip was William Knapp?

A No. I remember that was not the name

that was on the registration.

Q Okay. What did you do next after you went upstairs?

A After we went upstairs, we contacted the police department and requested that we could see if we could get ahold of someone that worked with the Metro Narcotics Squad, and Officer Kreutz telephoned us there at the motel and he talked to -- I believe he talked to Officer Ralls, then he -- Officer Kreutz responded to the motel, also.

Q Okay. What happened after Officer Kreutz got there?

A After Officer Kreutz got there, we were watching out and we observed the vehicle which was registered on the registration slip -- we identified it

[PAGE 8]

by the license plate number that was on the registration slip -- pull up in front of the motel room below us.

Q And did you do anything?

A We observed Mr. Knapp get out of the car and go inside the motel room.

Q Now, when you say "Mr. Knapp", is that person present in the courtroom?

A Yes, Ma'am.

Q Could you identify him?

A Yes. He is in the maroon sweater with the tie at the defense table.

MS. NYGAARD: Let the record reflect that the defendant has been identified.

THE COURT: Yes, the record may so reflect.

Q (By Ms. Nygaard) Before we go any further, was this Holiday Inn located in Pima County?

A Yes, Ma'am.

Q Now, after you -- well, during the time you were watching him, what did you see him do?

When I say "him", I mean Mr. Knapp.

A He took the bag full of items into the motel room and then he also took one or two suitcases, I don't remember which now, into the motel

room, then he brought a -- the suitcases back out after a short time.

Q What did he do with them?

[PAGE 9]

A He put them in the car and then he got in his vehicle and was going to leave.

Q Okay. What did you do then?

A Okay. We had requested other assistance from other officers. Officer Kingman and Officer Jackson were in the -- came into the area to assist us, and then when Mr. Knapp went to leave in his car, we stopped the car there. He was in the parking lot, still, of the Holiday Inn where we made the stop.

Q And did you do anything at that point?

A Yes. We arrested Mr. Knapp at that time.

Q Did you at that time conduct a search of this car?

A No. We secured the car and motel rooms, and if I remember right, then

we went to the -- the car was still secured and search warrants were obtained.

Q And after the search warrants were obtained, did you then conduct a search of the car?

A Yes. The search -- we conducted a search. Search warrants were obtained and, also, the T.P. identification unit also responded and took photographs while we were taking the items out of the car.

Q Okay. Am I correct, though, in saying that you did not conduct a search of the car until after you had obtained a search warrant?

[PAGE 10]

A Yes, Ma'am.

Q What were the items that you found in the car?

A There were two suitcases, both containing rolls of green substance which we believed to be marijuana.

Q This is your report?

A Yes, sir.

Q Okay. Do you want to read the first sentence of the third paragraph?

A "Upon our arrival, Officer Ralls and myself were led into Room 129 by Mrs. Dutton."

Q Okay. Read the second sentence also, please.

A "We checked the room and also went into the bathroom, where we observed the bags of marijuana."

[PAGE 35]

A At that time, I informed the officers that were set up east and west of the location on Grant Road that the vehicle was at the motel and from the vantage point that we had from the motel room, we were able to observe the driver of the vehicle emptying a suitcase in the rear seat area of his vehicle and also bring items into the

motel room Number 129 from his vehicle, and shortly thereafter, he came out, carrying the items, same suitcase and bags, but they appeared filled with something at that time.

Q Did they appear filled when he took them in?

A No, they did not.

Q So it appeared they got filled while he was inside and was carrying stuff out to his car?

A Yes.

Q Okay.

A And then as he got in the vehicle, during the course of this time, he was looking around excessively in all different directions as if watching for someone, and he got into the vehicle, backed the vehicle away from the slot that was directly in front of the Rooms 127 and 129 and began driving out of the parking lot in a northbound direction.

Q Officer, let me clarify just one thing. You said that he took suitcases into the motel [PAGE 36] room. Did the suitcases appear heavy when he carried them in?

A No, they did not. From where I was at, I observed him emptying one of the suitcases, what appeared to be clothing into the back seat of the car.

Q So it looked like he was taking clothes out of his suitcase, dumping them in the back seat and carrying the empty suitcase into the motel room?

A Yes.